

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE SALOME MANZANAREZ,)
)
 Petitioner,)
)
 vs.)
)
 CONNIE GIBSON, Warden,)
)
 Respondent.)
 _____)

CASE NO. SA CV 14-0279 GW (RZ)

ORDER TO SHOW CAUSE RE
UNTIMELINESS

The Court issues this Order To Show Cause directed to Petitioner because the face of the petition suggests that the action may be time-barred.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. *See* 28 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates, whichever is latest, if any of them falls after the petitioner’s conviction becomes final: the date on which a State-created impediment – itself a violation of Constitutional law – was removed; the date on which a newly-recognized Constitutional right was established; or the date on which the factual predicate for the claims could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

1 The time spent in state court pursuing collateral relief in a timely manner is
 2 excluded, *see* 28 U.S.C. § 2244(d)(2), and the statute also is subject to equitable tolling.
 3 *Holland v. Florida*, 560 U.S. 631, ___, 130 S. Ct. 2549, 2562, 177 L. Ed. 2d 130 (2010).

4 Petitioner did not date the current petition itself but supplies a February 23,
 5 2014 date on his proof of service. From the face of the petition and from judicially-
 6 noticeable materials, the Court discerns as follows:

- 7 (a) On July 21, 2009, in Orange County Superior Court, Petitioner entered a plea of no
 8 contest to numerous sexual crimes, including the rape of a child under 14 and the
 9 rape of a child under 10. He was sentenced to 38 years in prison. *See* Pet. ¶ 2.
- 10 (b) Petitioner did not appeal. Pet. ¶ 3. His conviction became final after September 21,
 11 2009, after his 60-day deadline for seeking a certificate of probable cause, and
 12 noticing an appeal, expired. *See* CAL. R. CT., Rules 8.304(b) (need for certificate)
 13 & 8.308 (60 day deadline). His one-year limitations period began to run on that date.
- 14 (c) Over four years passed. On October 17, 2013, Petitioner filed a habeas petition in
 15 the California Supreme Court. *See* Pet. ¶¶ 4, 6; *see generally* docket in *In re*
 16 *Manzanarez*, Cal. Supreme Ct. case no. S2104062. That court denied relief on
 17 January 15, 2014, with citations indicating its view that Petitioner had delayed too
 18 long in seeking relief (*In re Robbins*, 18 Cal.4th 770, 780 (1998)) and failed to
 19 provide sufficiently specific factual allegations to permit the court to evaluate his
 20 petition (*People v. Duvall*, 9 Cal.4th 464, 474 (1995); *In re Swain*, 34 Cal.2d 300,
 21 304 (1949)).
- 22 (d) Five weeks later, Petitioner filed the present Petition.

23 * * * * *

24 Unless this Court has miscalculated the limitations period, or some form of
 25 additional tolling applies in sufficient measure, this action is time-barred. It became stale
 26 after September 22, 2010, one year after his conviction became final.

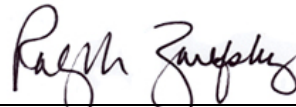
27 This Court may raise *sua sponte* the question of the statute of limitations bar,
 28 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260

1 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause in writing why this
2 action should not be dismissed as being barred by the one-year statute of limitations.
3 Petitioner shall file his response to the Court's Order to Show Cause not later than 30 days
4 from the filing date of this Order.

5 If Petitioner does not file a response within the time allowed, the action may
6 be dismissed for failure to timely file, and for failure to prosecute.

7 IT IS SO ORDERED.

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9 DATED: March 3, 2014

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11 RALPH ZAREFSKY
12 UNITED STATES MAGISTRATE JUDGE
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